IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2185 OF 1993

Shivaji S. Nikam ..Petitioner

versus

Smt. Shubhangi S. Ghatage
& Ors. ..Respondents

Mr. R. M. Haridas h/f. Mr. A. P. Mundargi for the Petitioner.

None for the Respondents.

CORAM : D. G. DESHPANDE, J.

DATE : 19TH OCTOBER, 2006

ORAL ORDER :

1. Heard Counsel for the Petitioner. Nobody is present for the Respondents. Even though they are served.

2. The petitioner applied to the MACT, Kolhapur, under Section 140 of the Motor Vehicles Act, for no fault liability. The Tribunal awarded Rs.25,000/- under that head as against Opponent Nos. 1 and 3 but exonerated the Insurance company holding that the Insurance policy did not cover the pillion

rider. As against that order, this petition is filed.

3. Counsel for the petitioner contended that when application under Section 140 is filed for no fault liability, the Tribunal should not have gone into the merits of the matter. He relied upon the judgment of the **Madhya Pradesh High Court reported in 2001 ACJ 1069 New India Assurance Co. Ltd. vs. Bhuvnesh Pathak & Anr.** In this case the Madhya Pradesh High court found that the vehicle was insured and the insurance company can raise the statutory defences or defences based on the policy at the time of final award and therefore counsel for the petitioner contended that exonerating the insurance company from the liability of no fault liability, was not proper on the part of the Tribunal.

4. I find considerable force in this submission. The insurance company can raise the statutory defences or defences when the petition / application for compensation is heard and decided on merits under Section 167. As a result, the petition is allowed in terms of prayer (b) of the petition.

Rule made absolute accordingly. Order of the Tribunal so far as it exonerates the Insurance company is set aside and all the opponents will be liable to pay jointly and severally the no fault liability compensation awarded to the Petitioner. No order as to costs.

(D.G. DESHPANDE, J.)